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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,300	04/01/2004	Gregory Plos	05725.1310-00000	8608
22852	7590	03/23/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,300

Applicant(s)

PLOS ET AL.

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 19-44, 46 and 49-59 is/are rejected.
- 7) ☒ Claim(s) 17, 18, 45, 47 and 48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Claims 1-59 are pending in this application.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 16, 19-21, 26-43, 46 and 50-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Pratt (US 2003/0019052 A1).

Matsunaga et al. (US' 206 A1) teaches a hair dyeing composition comprising a fluorescent of azomethine compound of a formula (2) as claimed in claims 1 and 16 (see page 1, formula (2)), wherein the fluorescent compound is presented in the composition in the amounts of 0.01 to 20%, 0.05 to 10% or 0.1 to 5% as claimed in claims 19-21 (see pages 2-3, paragraph, 0016), para-phenylenediamine as an oxidation base in the amount of 0.5 to 10% by weight as claimed in claims 26-27 (see page 3, paragraph, 0020 and paragraph, 0022), m-phenylenediamine as a coupler in the amount of 0.5 to 10% as claimed in claims 28-29 (see page 3, paragraphs, 0021 and 0022), oxidizing agent of hydrogen peroxide, perborates and laccase (four electron oxidoreductase) enzyme as claimed in claims 30-33 (see page 3, paragraphs, 0018-0019). Matsunaga et al. (US' 206 A1) also teaches a process for dyeing hair comprising applying to the hair the dyeing composition as described above and wherein the dyeing composition is

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applied to the hair after mixing with the oxidizing composition as claimed in claims 34-35, 40-41, 44, 46 and 50-55 (see page 3, paragraphs, 0026 and 0027). Matsunaga et al. (US' 206 A1) further teaches a discloses a multi-compartment device for dyeing hair as claimed in claim 39 (see page 3, paragraph, 0026).

The instant claims differ from the reference by reciting a composition comprising at least one polyol of the claimed formula. (1).

However, Matsunaga et al. (US' 206 A1) suggests the use of polyol in the hair dyeing composition (see page 3, paragraph, 0024).

Pratt (US' 052 A1) in analogous art of hair dyeing formulation, teaches a composition comprising polyol such as 1,4-butanediol that represents the claimed formula (1) and as claimed in claims 1-4 (see page 4, paragraph, 0053), wherein the polyol is used in the composition in the amounts of 0.5 to 30%, 1 to 15% and 5 to 10% as claimed in claims 5-7 (see page 4, paragraph, 0054).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Matsunaga (US' 206 A1) by incorporating the polyol of 1,4-butanediol as taught by Pratt (US' 052 A1) to make such a composition. Such a modification would be obvious because the primary reference of Matsunaga et al. (US' 206 A1) suggests the use of polyol in the dyeing composition (see page, 3, paragraph, 0024). pratt (US' 052 A1) as a secondary reference clearly teaches and discloses the claimed 1,4-butanediol, and, thus, a person of the ordinary skill in the art would be motivated to incorporate the polyol as taught by Pratt (US' 052 A1) in the dyeing composition of Matsunaga (US' 206 A1) with a reasonable expectation of success for improving the dyeing

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properties of the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

2 With respect to claims 8-14, 36-38, 42-43 and 56-59, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a dyeing composition comprising a fluorescent dye that provides maximum reflectance as claimed and wherein the composition can be applied to skin or different type of hair as claimed because the combined references of Matsunaga et al. and Pratt, teach and disclose the claimed components of fluorescent dye and polyols, and thus, a person of the ordinary skill in the art would expect such a composition to have similar physical properties including reflectance and wherein the composition can be applied to the skin and different hair types as claimed, absent unexpected results.

3 Claims 15 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Pratt (US 2003/0019052 A1) and further in view of Miyabe et al. (EP 1142 559 A2).

The disclosures of Matsunaga et al. (US' 206 A1) and Pratt (US' 052 A1) as described above, do not teach or disclose the claimed species of the direct dyes.

However, Matsunaga et al. (US' 206 A1) suggests the use of other direct dyes in the keratin fiber formulation (see page, 2, paragraph, 0015).

Miyabe et al. (EP' 559 A2) in other analogous art of keratin fibers dyeing formulation, teaches a composition comprising direct dyes such as cationic fluorescent direct dyes of azomethines ($-N=C-$) as claimed in claims 15 and 44 (see page 5, the cationic dye formulae).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Matsunaga (US' 206 A1) by incorporating the direct dyes of cationic azomethines as taught by Miyabe et al. (EP' 559 A2) to make such a composition. Such a modification would be obvious because the primary reference of Matsunaga et al. (US' 209 A1) suggests the use of direct dyes in the dyeing composition (see page 2, paragraph, 0015). Miyabe et al. (EP' 559 A2) as a secondary reference clearly teaches and discloses direct dyes of the claimed species cationic azomethines (see page 5, the disclosed formulae), and, thus, a person of the ordinary skill in the art would be motivated to incorporate the direct dyes as taught by Miyabe et al. (EP' 559 A2) in the dyeing composition of Matsunaga (US' 206 A1) with a reasonable expectation of success of improving the dyeing properties of the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

4 Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Pratt (US 2003/0019052 A1) and further in view of Vandenbossche et al. (US 6,391,062 B1).

The disclosures of Matsunaga et al. (US' 206 A1) and Pratt (US' 052 A1) as described above, do not teach or disclose the claimed species of the direct dyes.

However, Matsunaga et al. (US' 206 A1) suggests the use of other direct dyes in the keratin fiber formulation (see page, 2, paragraph, 0015).

Vandenbossche et al. (US' 062 B1) in other analogous art of keratin fibers dyeing formulation, teaches a composition comprising direct dyes such as nitrobenzene and

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anthraquinone dyes in the amounts of 0.5 to 10% which overlapped with the claimed ranges as claimed in claims 18-21 (see col. 7, lines 62-67 and col. 8, lines 1-3).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Matsunaga (US' 206 A1) by incorporating the direct dyes of nitrobenzenes and anthraquinones as taught by Vandebossche et al. (US' 062 B1) to make such a composition. Such a modification would be obvious because the primary reference of Matsunaga et al. (US' 209 A1) suggests the use of direct dyes in the dyeing composition (see page 2, paragraph, 0015).

Vandebossche et al. (US' 062 B1) as a secondary reference clearly teaches and discloses direct dyes of the claimed species nitrobenzene and anthraquinone dyes to broaden the range of shades and to obtain varied shades (see col. 7, lines 59-65), and, thus, a person of the ordinary skill in the art would be motivated to incorporate the direct dyes as taught by Vandebossche et al. (US' 062 B1) in the dyeing composition of Matsunaga (US' 206 A1) with a reasonable expectation of success for obtaining varied shades and would expect such a composition to have similar properties to those claimed, absent unexpected results.

5 Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Pratt (US 2003/0019052 A1) and further in view of Giuseppe et al. (US 5,744,127).

The disclosures of Matsunaga (US' 206 A1) and Pratt (US' 052 A1) as described above, do not teach or disclose dyeing compositions in forms of dyeing shampoos as claimed.

However, Matsunaga et al. (US' 206 A1) clearly teaches that no particular limitation is imposed on the form of the hair dyeing composition (see page 3, paragraph, 0027).

Giuseppe et al. (US' 127) in other analogous art of hair treating formulation, teaches a composition formulated as a hair shampoo and hair dyeing as well (see col. 6, lines 5-6).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be modified to formulate the dyeing composition of Matsunaga et al. in a shampoo form as taught by Giuseppe et al. to arrive at the claimed composition. Such a modification would be obvious because Giuseppe et al. clearly teaches that the dyeing composition can be formulated in a shampoo form, and, thus, one having ordinary skill in the art would be motivated to formulate the dyeing composition in any form including the shampoo form, and would expect such a composition to have similar properties to those claimed, absent unexpected results.

6 Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US 2001/0054206 A1) in view of Pratt (US 2003/0019052 A1) and further in view of Rondeau (US 6,436,153 B2).

The disclosures of Matsunaga et al. (US' 206 A1) and Pratt (US' 052 A1) as described above, do not teach or disclose the fluorescent compound of the claimed formula (F4) in which X- is an anion chosen from the claimed radicals.

However, Matsunaga et al. (US' 206 A1) suggests that other direct (fluorescent) dyes may be used in the dyeing composition (see page 2, paragraphs, 0014 and 0015).

Rondeau (US' 153 B2) in analogous art of hair dyeing formulation, teaches a composition comprising a fluorescent dye having a formula similar to the claimed formula (F4), col. 7, formula 14).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Matsunaga (US' 206 A1) by incorporating the fluorescent dyes as taught by Rondeau (US' 153 B2) to make such a composition. Such a modification would be obvious because the primary reference of Matsunaga et al. (US' 206 A1) suggests the use of fluorescent dyes in the dyeing composition (see page 2, paragraph, 0014). Rondeau (US' 153 B2) as a secondary reference clearly teaches and discloses the fluorescent compound of the claimed species, and, thus, a person of the ordinary skill in the art would be motivated to incorporate the fluorescent compound of the claimed species as taught by Rondeau (US' 153 B2) in the dyeing composition of Matsunaga (US' 206 A1) with a reasonable expectation of success for improving the dyeing properties of the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Allowable Subject Matter

7 Claims 17, 18, 45 and 47-48 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record do not teach or disclose a hair dyeing composition comprising fluorescent of the claimed formula (F3). Further the prior art do not teach or disclose sulphorhodamine dyes as claimed.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Primary Examiner
Art Unit 1751

March 20, 2006